

## MEMORANDUM

**SUBJECT:** Universal Waste Rule - Enforcement Issues & Addition of State-Only Universal Wastes (Note: This document deals with questions concerning wastes that are hazardous under the federal program.)

**FROM:** Eric V. Schaeffer, Director /S/  
Office of Regulatory Enforcement

**TO:** Norman Niedergang, Director  
Waste Pesticides and Toxics Division, Region V

I apologize for the delay in responding to questions raised in your March 26, 1998 memorandum regarding the inclusion of additional wastes by States in their universal waste (UW) programs before authorization by the Agency. The specific questions you raised and their answers are below.

**Question:** Whether wastes added by states not yet authorized for the universal waste rule program, and not included in the federal universal waste rule, should be regulated under the state's universal waste program or under the broader Subtitle C hazardous waste regulations? Does the Agency's April 10, 1996 Universal Waste Rule Implementation Memorandum address the Agency's enforcement response to these wastes?

**Answer:** As you noted in your memorandum, some States are including wastes that are not listed in the federal universal waste rule (a state-only waste) in their universal waste programs before they receive authorization.

The Agency's April 10, 1996 Implementation Memorandum provides that the Regions should take enforcement actions against universal waste handlers in states that are implementing the universal waste program but have not yet been authorized for those regulations only where handlers are not in full compliance with the Part 273 standards. We established this policy to encourage states to begin implementation of the collection programs allowed by the universal waste rule.

For the same reasons, we believe that the policy set forth in the Implementation

Memo should apply to those handlers of state-only wastes where the state is implementing a universal waste program that regulates those wastes. In the situation discussed in your memorandum, the Region should only take enforcement actions against handlers of the devices containing mercury (while a hazardous waste under the existing authorized program) where the handler has failed to comply with the Part 273 regulations or where such activity may present an imminent and substantial endangerment to human health or the environment.

Question: If the Office of Regulatory Enforcement (ORE) determines that the memorandum on “Universal Waste Rule-Implementation” (April 10, 1996), applies to the state-only universal wastes, would ORE agree that it only applies if a state based its decision for inclusion on and followed the criteria set forth at 40 CFR § 273.81?

Answer: Yes, it does make sense to interpret the “Universal Waste Rule-Implementation” (April 10, 1996) memorandum to apply to state-only universal wastes that have been adopted pursuant to the criteria set forth at 40 CFR Part 273.81. Where a state has added new wastes to its universal waste program before authorization, Regions should extend this policy if it determines that the additional wastes meet the criteria set forth in 40 CFR Part 273.81. This determination is important to ensuring that we regulate hazardous waste in a manner that the Agency has determined to be protective of human health and the environment.

If you have any additional questions or comments regarding this matter, please contact David Nielsen at (202) 564-4022 or have your staff contact Caroline Ahearn of my staff at (202) 564-4012.

cc: RCRA Enforcement Managers, Regions I-X  
Michaelle Wilson, OSW  
Wayne Roepe, OSW  
Mary Gleaves, OGC